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ALEXANDER L. STEVAS,
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No. 82-278

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LESTER JACKSON, *Petitioner*,

v.

THE WASHINGTON MONTHLY COMPANY, CHARLES PETERS AND JOHN ROTHCHILD, *Respondents.*

and

LESTER JACKSON, *Petitioner*,

v.

THE WASHINGTON MONTHLY COMPANY, *et al.*, *Respondents.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTION PRESENTED

Should certiorari be granted to this petitioner where his first case claiming common-law copyright violation was dismissed on motion for summary judgment and his second case claiming fraud was dismissed for repeated refusals to submit to discovery, where both dismissals were affirmed by the court of appeals without dissent, where petitioner essentially claims that several passing remarks by the district court in the course of a hearing in the first case necessitated recusal of the judge in both cases, and where that issue was considered and rejected both by the district court and by the court of appeals?

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STATUTES INVOLVED

This petition involves the following statutes and rules of court: 12 U.S.C. § 455; Rule 17 of the Rules of the United States Supreme Court; Rules 37(b) and 41(b) of the Federal Rules of Civil Procedure; and Rule 13(c) of the Rules of the United States Court of Appeals for the District of Columbia Circuit.

STATEMENT OF THE CASE

The petition involves two cases. In the first, hereafter referred to as the "copyright case," petitioner Lester Jackson has contended that the Washington Monthly (the "Monthly"), by publishing an article concerning the ineffectiveness of Senate "doves" during the Vietnam era, violated Jackson's common law copyright in a manuscript arguing for a filibuster against the war. Jackson's manuscript had earlier been rejected for publication by the Monthly. This issue was carefully reviewed by District Court Judge Aubrey Robinson, who granted summary judgment to the respondents on a finding that the two works were not substantially similar. A copy of the district court's considered decision appears at pp. 1a-6a, *infra*. Jackson appealed.

The second case was brought by Jackson during the course of the first, and alleged fraud on the part of the Monthly's editors and eight attorneys of the law firm of Rogers & Wells (most of whom have in fact never had anything to do with the case). The essence of Jackson's complaint in this action, hereafter referred to as the "fraud case," was his contention that during the course of settlement discussions in the copyright case involving an agreement by the Monthly to consider publication of a further article by Jackson, respondents conspired to conceal from him that one of the Monthly's editors thought he was a poor writer. This case was also assigned to Judge Robinson.

Shortly after the fraud case was commenced, respondents sought discovery from Jackson, intending to move as promptly as possible for summary judgment. The district court ordered Jackson to proceed with the requested discovery. But Jackson refused to do so, instead moving for recusal of the district court judge on the basis of

several passing remarks made by the judge over a year and a half earlier in the course of a hearing in the copyright case.[1] The district court denied Jackson's motion, and again ordered him to proceed with discovery. Once more, Jackson refused, this time seeking a writ of mandamus directing the district court's recusal. After Jackson's mandamus petition—and his subsequent suggestion for rehearing en banc—were denied by the court of appeals, the district court once again ordered Jackson to proceed, cautioning him that further disobedience would result in dismissal. Again, Jackson refused to obey the court's order, and this time his case was dismissed. A copy of the court's order of dismissal appears at p. 7a, *infra*.

Jackson then appealed this dismissal as well. Both cases were fully briefed before the court of appeals, which also heard oral argument in both cases consecutively on the same day. After giving all the issues presented "full consideration," the court of appeals affirmed both decisions of the district court, without dissent and in *per curiam* opinions *(see* pp. 8a-11a, *infra)*.

Now, Jackson seeks certiorari from this Court. In so doing, he is only continuing a pattern of meeting failure with personal attacks that has characterized his litigation. Thus, he began in the copyright case by responding

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[1] The remarks Jackson complained of came in the course of an all-day hearing in which Jackson, representing himself, continuously attempted to enter extraneous material into the record and generally carried on in an inappropriate manner.

to rejection of his manuscript with an attack on the integrity of the editors of the Monthly. He continued in the fraud case with an attack on the integrity of the Monthly's attorneys. He continued after the summary judgment decision against him with an attack on the integrity of the district judge. Now, in this petition, he attacks the integrity of the court of appeals, whose members are charged, among other things, with protecting other judges, of improperly fraternizing with district court judges located in the same building, and of placing their "social and working relationships" ahead of their judicial responsibilities. (Petition for Certiorari (hereafter "Pet.") at 26-27). He even suggests that a failure by the Supreme Court to grant certiorari in these cases would be based on a desire by this Court to minimize "personal and institutional pain and shame" (Pet. at 23).

All of these disparaging allegations are unwarranted and inappropriate. The decisions of both the district court and the court of appeals below were thorough and considered, and it is clear that the only real complaint Jackson has is that the courts below have consistently held that his cases are without merit. It is characteristic that Jackson now seeks certiorari of the judgments against him not on their merits, but on the imagined hostility of every federal judge who has ruled against him. This is the petition of an obsessed litigant, wholly unwilling to accept the unmeritorious nature of his case, and it should be denied.

SUMMARY OF ARGUMENT

Jackson has identified no aspect of the decisions against him which conflict with the decisions of this Court or of any other circuit, nor has he identified any departures from the "accepted and usual course" of judicial proceedings on the part of the court of appeals that would call for

exercise of this Court's discretion to grant certiorari. Jackson's petition should therefore be denied.

ARGUMENT

I. There Is No Reason To Grant Certiorari Here To Review The Federal Recusal Statute.

"A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." United States Supreme Court Rule 17. Thus, "this Court does not sit to satisfy a scholarly interest in . . issues. Nor does it sit for the benefit of the particular litigants. 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic." *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 74 (1954) (citations omitted). The recusal "issues" raised in Jackson's petition for certiorari, when they are not totally insubstantial, are nothing if not "academic" and "episodic." His petition should therefore be denied.

Jackson asserts that certiorari should be granted because the court of appeals allegedly applied the wrong standard under the federal recusal statute, 12 U.S.C. § 455 (Pet. at 8, 20-21).[2] That statute imposes a "reasonable man" standard on an examination of alleged impartiality of a federal judge.[3] Yet Jackson's argument that the court of appeals erred in applying that standard is

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[2] 12 U.S.C. § 455(a), as amended, provides that a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

[3] *See, e.g., United States* v. *Cowden*, 545 F.2d 257, 265 (1st Cir. 1976), *cert. denied* 430 U.S. 909 (1977) ("The proper test . . . is whether the charge of lack of impartiality is grounded on facts that

based, incomprehensibly, solely on a colloquy in which Judge Davis in fact referred to this very standard (Pet. at 11a) (emphasis supplied):

> MR. JACKSON: . . . I know, Judge Davis, that you refer to your 20 years of experience. But with all due respect, the recusal standard is not the superior insight of a judge into the problems of his colleagues, but what the average person on the street would think of this.
>
> THE COURT: I do not think that is the standard. I do not think it is the *average* person on the street. I think it is a *reasonable* position.

Thus, Jackson's argument that the court of appeals applied the wrong standard is wholly unsupported and can form no basis for a grant of certiorari.

Jackson's other arguments for certiorari on the recusal issue are equally contrived. Thus, he argues that certiorari should be granted to "stem the tide of lagging enforcement" of the recusal statute (Pet. at 11). Even if such a metaphorically mixed "lagging tide" existed, however—and Jackson himself cites pages of cases where the statute is being enforced—this is a matter of wholly academic interest here, where recusal was so clearly unwarranted.[4]

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would create a reasonable doubt concerning the judge's impartiality . . . in the mind of the reasonable man"); *Parrish* v. *Board of Commissioners of the Alabama State Bar*, 524 F.2d 98, 103 (5th Cir. 1975) *cert. denied*, 425 U.S. 944 (1976); *In re International Business Machines Corp.*, 618 F.2d 923, 929 (2d Cir. 1980).

[4] Jackson's arguments for recusal—which have varied from brief to brief—here include a complaint that the district court judge spoke harshly to him and that the judge ruled against him (Pet. at 2-5). None of Jackson's arguments warrant recusal of the district court judge. It is well settled that even "[r]epeated rulings against [a]

Jackson also argues that certiorari should be granted to review conflicts he perceives among various courts in certain technical aspects of the recusal statute (such as whether bias must arise from an "extra-judicial source," or whether the timeliness requirements of 12 U.S.C. § 144 can be read into 12 U.S.C. § 455) (Pet. at 19-22). But such questions play no part in this case, where recusal of the district court judge would not be required under any reasonable application of the statute. Any such "conflicts," then, are matters of mere academic interest in this case and form no basis for the exercise of this Court's discretion to grant certiorari.

II. Jackson Has Raised No Other Issue Worthy Of Certiorari In These Cases.

Jackson's other arguments (Pet. at 27-32) similarly offer no basis for granting certiorari. For example, Jackson argues that he was somehow denied effective self-representation as a result of an isolated remark by the district court about *pro se* litigants (Pet. at 27-28). This contention speaks for itself. Moreover, the record is clear that Jackson was granted every opportunity to make his case before both the district court and the court of appeals—including the filing of numerous lengthy briefs, which frequently exceeded page limitations and involved

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litigant . . . are not a basis for disqualification of a judge on the grounds of bias and prejudice." *Smith* v. *Danyo*, 441 F. Supp. 171, 180 (M.D. Pa. 1977), *aff'd*, 585 F.2d 83 (3rd Cir. 1978) (applying the parallel recusal provisions of 12 U.S.C. § 144). *See also*, *Hagan* v. *Andrus*, 651 F.2d 622, 628 (9th Cir.), *cert. denied*. ___ U.S. ___, 102 S.Ct. 313 (1981). And insufficient deference to a litigant is also not a ground for recusal, as Jackson seems to claim. *See, e.g.*, *Blizard* v. *Frechette*, 601 F.2d 1217, 1220 (1st Cir. 1970); *Hagan* v. *Andrus*, *supra*, 651 F.2d at 628.

numerous extensions of time for filing, massive appendices, and full oral argument before the court of appeals in both cases. The fact is that rather than being denied effective self-representation, Jackson simply has had no effective case.

Similarly, Jackson's contention (Pet. at 29-30) that the dismissal of his fraud case was an "egregious departure" from judicial practice is unfounded. As discussed above, Jackson flatly refused for more than eight months to make any discovery whatsoever, deliberately ignoring three separate orders of the district court directing him to do so. In light of Jackson's repeated and contemptuous disobedience of the court's orders, the district court had no choice but to dismiss his case. It can hardly be contended that the court of appeals' affirmance of dismissal under these circumstances was an "egregious departure" from judicial practice.[5]

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[5] The court of appeals' affirmance was in accordance with many other cases which have upheld dismissal under similar circumstances. *See, e.g., Hepperle* v. *Johnston*, 590 F.2d 609, 613 (5th Cir. 1979), where the court upheld dismissal of a *pro se* plaintiff's action, noting that he "not only exhibited a pattern of delay, but also received a warning of dismissal and refused to obey court orders to appear . . . ." Moreover, the court rejected the plaintiff's claim in that case that the dismissal of his case should be reversed because of the trial court judge's failure to recuse himself; precisely the claim Jackson now raises. *See also, Stebbins* v. *State Farm Mutual Automobile Insurance Co.*, 413 F.2d 1100, 1102 (D.C. Cir.), *cert. denied*, 396 U.S. 895 (1969), where the court upheld dismissal of a *pro se* plaintiff's action for refusal to comply with orders requiring him to appear for his deposition, and *Bonaventure* v. *Butler*, 593 F.2d 625, 626 (5th Cir. 1979), where the court upheld dismissal of a *pro se* plaintiff's action, observing that "[d]eliberate, repeated refusals to comply with discovery orders have been held to justify the use of this ultimate sanction."

Of similar ilk is Jackson's final contention (Pet. at 30-32) that the court of appeals' affirmance without opinion of the district court's grant of summary judgment in the copyright case was also an "egregious departure" from judicial practice.[6] The district court issued a considered opinion on the question of copyright, concluding that the requirement of substantial similarity between the two works in issue simply was not met. The issue of similarity and other related points of law raised by Jackson were fully briefed and argued before the court of appeals, which then affirmed *per curiam* the decision of the district court. There is obviously nothing unusual or inappropriate in this procedure, much less any possible ground for grant of certiorari. Indeed, this is expressly

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[6] In this regard, Jackson also reargues various points that he submitted at length to the court of appeals, including primarily an attack on respondents' supporting affidavits (Pet. at 30-32). In addition to affidavits from the Monthly's staff regarding preparation of their article, respondents filed affidavits from a number of U.S. Senators and Senate staff members reflecting that they had been interviewed by the Monthly in connection with its article on Senate doves. These affidavits confirmed what was evident from a reading of the article: that the Monthly had done substantial work in preparing it. And this was the conclusion of the district court.

As to Jackson's contentions that one of the Senators gave a false affidavit and that the respondents altered evidence and engaged in deceit, suffice it to say that these are of a piece with similar baseless and disparaging allegations made by Jackson throughout this case (see discussion *supra*) and were properly rejected by the courts below.

permitted by Rule 13(c) of the Rules of the Court of Appeals of the District of Columbia Circuit:

> In accordance with recommendations for improvement of judicial administration, this Court may, while according full consideration of the issues, dispense with opinions where the issues occasion no need therefor, and confine its action to such abbreviated disposition as it may deem appropriate . . . (footnote omitted).

It would be hard to compose a better description of both Jackson's cases than that contained in this rule.

CONCLUSION

As set forth above, Jackson has identified no reason—much less a "special and important" reason—for this Court to grant certiorari here. Respondents therefore respectfully submit that Jackson's petition for certiorari should be denied.

Respectfully submitted,

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Dated: September 19, 1982

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 72-742

LESTER JACKSON, *Plaintiff*,

v.

THE WASHINGTON MONTHLY CO., et al., *Defendants*.

FILED
SEP. 24 1979
James E. Davey, Clerk

MEMORANDUM OPINION AND ORDER

Before the Court are Cross-Motions for Summary Judgment in an action brought by Lester Jackson against the Washington Monthly, *et al*. Plaintiff is requesting damages arising out of an alleged infringement of his common law copyright on an unpublished manuscript entitled "The Tragedy of the Peace Movement's Lost Golden Opportunity: The Case for a Senate Fillibuster of Appropriations to End the Vietnam War, and the Case for Electoral Pressure to Bring on the Fillibuster," and the revised version entitled "How to End the War by June 30, 1971." The publication alleged to have infringed plaintiff's manuscript is an article called "Cooing Down the War: The Senate's Lame Doves," written by Defendant John Rothchild and published by Defendant Washington Monthly. This Court has jurisdiction under 28 U.S.C. §§ 1338, 2201 and Rule 56 of the Federal Rules of Civil Procedure.

There is no conflict as to the underlying material facts in this case. Lester Jackson wrote the aforementioned manuscript as a thesis and sent it to the Washington Monthly for publication. The Monthly found the manuscript unsuitable for publication and recommended to Plaintiff that he send it elsewhere. Defendant did, however, keep a copy of the manuscript on file.

In his unpublished thesis, Jackson contended that the focus of the peace movement was misplaced. Instead of trying to

elect a majority in both Houses of Congress, the movement should pressure Senate doves to support a fillibuster of war appropriations. The threat of defeat by ballot should be employed to force ineffective Senate doves into action, and any dove who failed to support the fillibuster should be denied reelection. He contended that the peace movement had been content with speeches and symbolic victories and that a change in the approach and demeanor of the movement would be necessary to end the Vietnam War.

Subsequent to its dealings with Plaintiff, Defendant Monthly published Rothchild's article. The article deals exclusively with the impotence of Senate doves and ponders why, if the war was desperate (as it had been characterized rhetorically by many dove Senators) anti-war Senators did not behave desperately. Plaintiff is mentioned twice in the article. He is cited as someone who tried to persuade some dovish Senators to fillibuster, and is quoted to support the notion that peace constituencies were satisfied with resolutions and symbolic victories.

Since this suit is based on an alleged common law copyright infringement, the law of the District of Columbia is controlling.[1] To recover for the infringement of his copyright, Plaintiff must show (1) ownership and copyrightability of the alleged copied material,[2] (2) access to the work by Defendant,[3] (3) substantial similarity between Plaintiff's and Defendant's work,[4] and (4) that Defendant copied Plaintiff's manuscript.[5] In the instant case, ownership of and access to the Jackson manuscript is not disputed. It is uncontroverted that Defendants

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[1] See Erie R. Co. v. Tompkins, 304 U.S. 64, 78 (1938).

[2] 3 Nimmer on Copyright § 13-03[A] p. 3-4 (1978 ed.).

[3] Lapsley v. American Institute of Public Accountants, 246 F.Supp. 389 (D.D.C. 1965), at 390.

[4] Id. at 390.

[5] Id. at 390.

copied two sentences from Plaintiff's work; indeed, those sentences are credited to him. Defendants vigorously assert, however, that there is no substantial similarity between the works in question and that no other copying was performed.

It is evident from a perusal of the literature in question that some overlap of ideas exists. Both works deal with the behavior of Senate doves, and both criticize those doves for their inaction. An idea cannot be copyrighted, however; no copyright infringement action will lie unless the *way* those ideas are expressed is similar.[6] Furthermore, even if there is some similarity in the modes of expression, copying must be inferred from this similarity. Thus, the use of particular words or common phrases does not give rise to an action for copyright infringement; it is in the arrangement of words that a cause of action must be based.[7]

This Court finds, as a matter of law, that with the exception of the two sentences attributed to Jackson, there is no similarity between the works in question.[8] The question remains,

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[6] Id. at 391.

[7] The English language is not broad enough so that similarity of phraseology and word usage will not appear in material on the same topic. . . . It would be ridiculous to consider such similarity a copyright infringement. Plaintiff has no monopoly on the words or phrases he has used. Plaintiff's right is to the arrangement of the words he has selected to express his ideas, not to the ideas or words themselves. Lapsley, supra, at 391.

[8] Jackson has provided the Court with an exhibit detailing the alleged similarities in language. The following are examples from that exhibit:

> *Jackson:* In a sense, these are the real war criminals . . . These Senators understand it [the horror] fully and vote to continue it. They are the criminals.
>
> *Rothchild:* . . . in the context of the Senate's required assent to Vietnam, the doves become partners in crime.
>
> *Jackson:* The idea that speaking out constitutes "courageous leadership" is indicative of the whole sorry mess we are in. If

however, whether the appropiation of those two sentences renders the articles similar, and if so, whether the similarity is substantial.

It is clear that similarity is to be ascertained by a comparison of the works, taken as a whole, rather than through "hypercritical dissection of the sentences."[9] Such rigorous analysis is not needed to locate the similar portions, however. Defendant has attributed them to Plaintiff. Some similarity between works is permissible. For an infringement to have occurred, a substantial, or "material" amount of Plaintiff's work must have been appropriated. Substantiality is determined by comparing the copied material to Plaintiff's manuscript, taken as a whole.[10] If "the value of the original is sensibly diminished, or the labors of the author are substantially to an injurious extent appropriated by another,"[11] a copyright infringement exists.

The thrust of Jackson's manuscript concerned persuading Senate doves to fillibuster against war appropriations. The viability of fillibustering was depicted in great detail. Senate ineffectiveness was attributed to the doves' failure to employ radical action, and electoral pressure was deemed necessary to encourage such action. Underlying this was the notion that electoral force had not been used in the past because peace

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speeches could end the war, we would have been out of Vietnam long ago. . . .

Rothchild: Until recently, dove Senators have been committed only to a war of rhetoric, which they won long ago. There was a time when even words were courageous, but the war has won a victory over the words by seducing them, so that it is not distinctive to talk against the war, even while you are escalating it.

[9] Lapsley, supra, at 391: Costello v. Lowe's Inc., 159 F. Supp. 782 (D.D.C. 1958), at 788.

[10] Nimmer, supra at 13-29.

[11] Id. at 13-31.

constituencies had been satisfied with rhetoric. To terminate the war, Jackson asserted, the peace constituencies must be more demanding.

The appropriated sentences[12] deal solely with the satisfaction of the peace constituencies. They are merely peripheral supports for the basic thrust of Plaintiff's manuscript, and in no way reflect Plaintiff's work, taken as a whole. Their use in no way deminishes the value of the original. Defendants' use of the Jackson material could only further Plaintiff's reputation and inspire demand for publication of his manuscripts.

Jackson also contends that his labor was unfairly appropriated. This is wholly unsupported by the evidence, which reflects that Defendant Rothchild performed an extensive amount of research before writing his article.

Summary Judgment is an appropriate form of relief when it eliminates a useless trial and avoids "long and expensive litigation productive of nothing."[13] This is especially true in the instant case, where the materials on which the claim of infringement is based are before the Court, and "no amount of expert or lay testimony as to fancied similarities could change the obvious content of the exhibits."[14]

Accordingly, it is by the Court this 24th day of September, 1979,

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[12] "Anything done by congressional peace advocates has been gratefully accepted and applauded," writes Lester Jackson. "Dove constituents have been impressed with debates and hearings, with resolutions and with resolutions repealing resolutions, with moral victories and symbolic events."

[13] Washington Post Co. v. Keogh, 365 F.2d 965 (D.C. Cir. 1966) at 968, *cert. den.*, 385 U.S. 1011.

[14] Costello v. Loew's Inc., *supra*, at 789; Gethers v. Blatty, 283 F.Supp. 303 (D.C. Cal. 1968).

ORDERED, that Defendants' Motion for Summary Judgment is hereby GRANTED and Plaintiff's Motion for Summary Judgment is hereby DENIED.

/s/ AUBREY E. ROBINSON, JR.

Aubrey E. Robinson, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 79-1400

LESTER JACKSON, *Plaintiff*,

v.

THE WASHINGTON MONTHLY CO., et al., *Defendants*.

FILED
AUG. 22 1980
James E. Davey, Clerk

ORDER

Upon consideration of Defendant's Motion for the Sanction of Dismissal, which was effectively stayed by this Court's Order of July 1, 1980, Plaintiff's Statement Concerning Defendants' Discovery Notices, and the entire record herein, the Court notes that (1) twice prior to July 1 this Court Ordered Plaintiff to submit to oral examination; (2) Defendants submitted their Motion for the Sanction of Dismissal because Plaintiff had persistently refused to submit to oral examination or prosecute this litigation; (3) on July 1, 1980 this Court stayed Defendants' Motion, Ordered Plaintiff to submit to oral examination, and warned Plaintiff that his refusal to do so would result in dismissal of the instant litigation; (4) the Court tolerated Plaintiff's refusal to comply with the discovery request because he was litigating *pro se;* and (5) it is no longer in the interests of justice to permit Plaintiff to abrogate the Federal Rules of Civil Procedure. It is therefore by the Court, pursuant to Rules 37(b) and 41(b) of the Federal Rules of Civil Procedure, this 22nd day of August, 1980.

ORDERED, that the instant case be and hereby is DISMISSED with prejudice.

/s/ AUBREY E. ROBINSON, JR.

Aubrey E. Robinson, Jr.
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1981

Civil Action No. 749-72

No. 79-2264

LESTER JACKSON, *Appellant*,

v.

THE WASHINGTON MONTHLY CMPANY,
CHARLES PETERS, JOHN ROTHCHILD

United States Court of Appeals
for the District of Columbia Circuit
FILED
FEB. 9 1982
George A. Fisher, Clerk

Appeal From The United States District Court For The District Of Columbia

Before: EDWARDS, Circuit Judge, and MCGOWAN, Senior Circuit Judge and OSCAR H. DAVIS,* Judge, United States Court of Claims

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c).

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*Sitting by designation pursuant to 28 U.S.C. § 293(a).

On consideration of the foregoing. It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam
For the Court
/s/ GEORGE A. FISHER

George A. Fisher
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1981

Civil Action No. 79-01400

No. 80-2135

LESTER JACKSON, *Appellant*,

v.

THE WASHINGTON MONTHLY COMPANY, *et al.*

United States Court of Appeals
for the District of Columbia Circuit
FILED
FEB. 5 1982
George A. Fisher, Clerk

Appeal From The United States District Court For The District Of Columbia

Before: EDWARDS, Circuit Judge, and MCGOWAN, Senior Circuit Judge and OSCAR H. DAVIS,* Judge, United States Court of Claims

JUDGMENT

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On consideration of the foregoing. It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam
For the Court
/s/ GEORGE A. FISHER

George A. Fisher
Clerk

Rule 17, Rules Of The United States Supreme Court

PART V. JURISDICTION ON WRIT OF CERTIORARI

Rule 17. Considerations Governing Review on Certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

* * *

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court. . . .

Rule 37(b) And 41(b), Federal Rules of Civil Procedure

Rule 37. Failure to Make or Cooperate in Discovery: Sanctions

* * *

(b) Failure to Comply with Order.

(1) *Sanctions by Court in District Where Deposition is Taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by Court in Which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

* * *

(c) An order . . . dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. . . .

Rule 41. Dismissal of Actions

* * *

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Rule 13(c), Rules Of The United States Court Of Appeals For The District Of Columbia Circuit

RULE 13

OPINIONS OF THE COURT

* * *

(c) ORDER FORM OF DECISION. In accordance with recommendations for improvement of judicial administration,[1] this Court may, while according full consideration of the issues, dispense with opinions where the issues occasion no need therefor, and confine its action to such abbreviated disposition as it may deem appropriate, e.g., affirmance by order of a decision or judgment of a court or administrative agency, a judgment of affirmance or reversal, containing a notation of precedents, or accompanied by a brief memorandum. See Rule 8(f). If the parties have agreed to such disposition, they may so state in their briefs or may so stipulate at any time prior to decision. In any such case the Court will promptly issue a judgment unless compelling reasons otherwise dictate.

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[1] Report of the President's Commission on Crime in the District of Columbia (1966) p. 308; and see Canon 19—American Bar Association Canons of Judicial Ethics; position adopted by the Judicial Conference of the United States—March 16, 1964.